Table of Contents

CHAPTER 1: General Rules Governing Court Proceedings 1

- 1.1 Access to Court Proceedings and Records 1
- 1.2 Waiver of Fees 5
- 1.3 Oaths or Affirmations 6
- 1.4 Disqualification of Judge 9
- 1.5 Attorney Misconduct 12
- 1.6 Order to Appear 13
- 1.7 Contempt of Court 15
- 1.8 Personal Protection Orders (PPOs) 18
- 1.9 Discretion 20

CHAPTER 2: Evidence 21

Part I—General Matters (MRE Articles I, II, III, V, and XI) 22

- 2.1 Evidence—Overview 22
- 2.2 Motion in Limine 24
- 2.3 Admissibility 25
- 2.4 Foundation 28
- 2.5 Judicial Notice 29
- 2.6 Burden of Proof 30
- 2.7 Presumptions 31
- 2.8 Order of Proof 33
- 2.9 Limits on Evidence and Testimony 34
- 2.10 Privileges 37
- 2.11 Missing Evidence 40

Part II—Relevancy (MRE Article IV) 41

- 2.12 Relevant Evidence 41
- 2.13 Character Evidence 44
- 2.14 Similar Acts Evidence 50
- 2.15 Habit or Routine Practice 54
- 2.16 Prior Accidents 55
- 2.17 Subsequent Remedial Measures 56
- 2.18 Settlement Negotiations 56
- 2.19 Insurance Coverage 57
- 2.20 Police Report 58
- 2.21 Polygraph 58

Part III—Witnesses, Opinions, and Expert Testimony (MRE Articles VI and VII) 61

- 2.22 Witness Disclosure 61
- 2.23 Exclusion of Witnesses 63
- 2.24 Competency of Witness 64
- 2.25 Child Witness 65
- 2.26 Examination & Cross-Examination 67
- 2.27 Nonresponsive Answer 68
- 2.28 Impeachment of Witness—Bias, Character, Prior Convictions, Prior Inconsistent Statements 69
- 2.29 Refreshing Recollection 76
- 2.30 Depositions and Interrogatories 80
- 2.31 Self-Incrimination 82
- 2.32 Lay Opinions 85
- 2.33 Scientific Expert Testimony 86
- 2.34 Syndrome Evidence 93
- 2.35 Medical Malpractice—Expert Testimony 96
- 2.36 Police Witness—Expert Testimony 100
- 2.37 Fingerprints 102
- 2.38 Tracking Dog Evidence 103

Part IV—Hearsay (MRE Article VIII) 104

- 2.39 Hearsay 104
- 2.40 Hearsay Exceptions 107
- 2.41 Statement of Co-Defendant or Co-Conspirator 113
- 2.42 Negative Evidence 116

Part V—Exhibits (MRE Articles IX and X) 119

- 2.43 Receipt, Custody, and Return of Exhibits 119
- 2.44 Chain of Custody 119
- 2.45 Charts, Diagrams, and Summaries 121
- 2.46 Demonstrative Evidence and Experiments 122
- 2.47 Photographs, Videotapes, Audiotapes 123
- 2.48 Writings and Documents 125

CHAPTER 3: Civil Proceedings 127

Part I—Pleadings, Parties, and Commencement of Action (MCR Subchapters 2.000–2.200) 129

- 3.1 Jurisdiction and Venue 129
- 3.2 Jurisdiction—Each Court 135
- 3.3 Civil Pleadings 138
- 3.4 Joinder of Parties and Claims 141
- 3.5 Res Judicata and Collateral Estoppel 142
- 3.6 Waiver of Fees 144
- 3.7 Summons 145
- 3.8 Service of Process 146
- 3.9 Third Party Practice 147
- 3.10 Intervention 148
- 3.11 Motion for More Definite Statement 150
- 3.12 Motion to Strike 150
- 3.13 Amendment of Pleadings 151
- 3.14 Pro Per (Self-Represented) Litigants 154

Part II—Pretrial Motions (MCR Subchapters 2.100 and 2.200) 154

- 3.15 Motions 154
- 3.16 Reconsideration or Rehearing 157
- 3.17 Security for Costs 158
- 3.18 Change of Venue 158
- 3.19 Separate or Joint Trial 161
- 3.20 Substitution or Withdrawal of Attorney 162
- 3.21 Adjournments 162
- 3.22 Dismissal 164
- 3.23 Default and Default Judgments 167
- 3.24 Summary Disposition 174

Part III—Discovery (MCR Subchapter 2.300) 181

- 3.25 Discovery Motions 181
- 3.26 Request for Admissions 185
- 3.27 Request for Documents 186
- 3.28 Privileged Materials 188
- 3.29 Independent Medical Examinations 191
- 3.30 Disclosure of Witnesses 192

Part IV—Resolution Without Trial (MCR Subchapter 2.400) 194

- 3.31 Pretrial Conferences 194
- 3.32 Offer of Judgment 197
- 3.33 Case Evaluation 199
- 3.34 Alternative Dispute Resolution 204
- 3.35 Settlements 205

Part V—Trial (MCR Subchapter 2.500) 208

- 3.36 Bench Trial 208
- 3.37 Jury Trial 210
- 3.38 Jury Selection 211
- 3.39 Voir Dire 217
- 3.40 Opening Statements and Closing Arguments 219
- 3.41 Oaths or Affirmations 221
- 3.42 Stipulations 223
- 3.43 Subpoenas 224
- 3.44 Questions or Comments by Judge 225
- 3.45 View 226
- 3.46 Directed Verdict 226
- 3.47 Jury Instructions 228
- 3.48 Jury Deliberation 230
- 3.49 Jury Questions 231
- **3.50** Hung Jury **233**
- 3.51 Mistrial 235
- 3.52 Verdict 236
- 3.53 Findings of Fact and Conclusions of Law 238

Part VI—Post-Judgment Proceedings (MCR Subchapter 2.600) 239

- 3.54 Judgment Notwithstanding the Verdict and New Trial 239
- 3.55 Remittitur and Additur 242
- 3.56 Costs 243
- **3.57** Attorney Fees **244**
- 3.58 Sanctions 246
- 3.59 Enforcement of Judgments 249

Part VII—Rules Governing Particular Types of Actions (Including MCR Subchapters 3.300–3.600) 250

- **3.60** Arbitration **250**
- **3.61** Class Action **252**
- 3.62 Contracts 253
- 3.63 Declaratory Judgments 257
- 3.64 Equity 258
- 3.65 Injunctive Relief 259
- 3.66 Interpleader 262
- **3.67** Mandamus **263**
- 3.68 Superintending Control 264

CHAPTER 4: Criminal Proceedings 267

Part I—Preliminary Proceedings (MCR Subchapters 6.000 and 6.100) 269

- 4.1 Complaints and Warrants 269
- 4.2 Arrest 270
- 4.3 Pretrial Release 272
- 4.4 Attorneys—Right to Counsel—Substitute Counsel 277
- 4.5 Attorneys—Waiver of Counsel 281
- **4.6** Grand Jury **285**
- 4.7 Preliminary Examination—Motion to Quash 288
- 4.8 Information 291

Part II—Pretrial Motions and Proceedings (MCR Subchapters 6.000 and 6.100) 293

- 4.9 Motions 293
- 4.10 Motion to Suppress Evidence 296
- 4.11 Motion to Suppress Defendant's Statement 298
- 4.12 Motion to Suppress Identification of Defendant 306
- 4.13 Competency Determination 311
- 4.14 Double Jeopardy 315
- **4.15** Entrapment **317**
- 4.16 Expert Witness—Court Appointed 321
- 4.17 Change of Venue 322
- 4.18 Separate or Joint Trial 323
- **4.19** Speedy Trial **326**
- 4.20 Adjournment or Continuance 331
- 4.21 Search and Seizure Issues 333
- 4.22 Automobile Searches 349
- 4.23 Dwelling Searches 352
- 4.24 Investigatory Stops 355
- 4.25 Search Warrants 357

Part III—Discovery and Required Notices (MCR Subchapter 6.200) 361

- **4.26** Discovery **361**
- 4.27 Rape Shield Law 367

- 4.28 Alibi Defense 372
- 4.29 Defenses Involving a Defendant's Mental Status 375
- 4.30 Witnesses—Disclosure and Production 380

Part IV—Pleas (MCR Subchapter 6.300) 385

- 4.31 Felony Plea Proceedings 385
- 4.32 Nolo Contendere (No Contest) Plea 387
- 4.33 Plea of Not Guilty by Reason of Insanity—MCR 6.304 389
- 4.34 Plea of Guilty but Mentally III—MCR 6.303 390
- 4.35 Withdrawal of a Guilty Plea 391
- 4.36 Sentence Bargaining 395
- 4.37 Plea—Collateral Attack of Earlier Plea or Conviction 399

Part V—Trials (MCR Subchapter 6.400) 402

- 4.38 Jury Trial 402
- 4.39 Jury Waiver 409
- 4.40 Bench Trial 411
- 4.41 Confrontation 413
- 4.42 Questions or Comments by Judge 416
- 4.43 Defendant's Conduct and Appearance at Trial 417
- 4.44 Evidence of Defendant's Conduct 420
- 4.45 Stipulations, Statements, and Arguments 421
- 4.46 Ineffective Assistance of Counsel* 425
- 4.47 Directed Verdict 429
- 4.48 Jury Instructions 431
- 4.49 Jury Deliberation 435
- **4.50** Jury Questions **437**
- 4.51 Verdict 439
- 4.52 Mistrial 441
- 4.53 New Trial 444

Part VI—Sentencing and Post-Sentencing (MCR Subchapters 6.400 and 6.500) 448

- 4.54 Sentencing—Felony 448
- 4.55 Sentencing—Habitual Offender 456
- 4.56 Sentencing—Deferred, Delayed, and Diversionary 458
- 4.57 Sentencing—Juvenile 460
- 4.58 Sentencing—Sexually Delinquent Person 462
- 4.59 Sentencing—Jail Credit 463
- 4.60 Probation Violation 467
- 4.61 Post-Appeal Relief 470
- 4.62 Expungement 472

Part VII—Rules Governing Particular Types of Offenses 473

- 4.63 Aiding and Abetting 473
- **4.64** Attempts **474**
- 4.65 Conspiracy 476
- 4.66 Controlled Substances 478

CHAPTER 5: Appeals & Opinions 481

Part I—Rules Governing Appeals to Circuit Court (MCR Subchapter 7.100) 481

- 5.1 District Court 481
- 5.2 Administrative—Generally 483
- 5.3 Michigan Employment Security Commission 486
- 5.4 Parole Board 488
- 5.5 Secretary of State 490

Part II—Tools for Deciding Appeals to Circuit Court 493

- 5.6 Standard of Review 493
- 5.7 Basis for Parties' Positions 496
- **5.8** Precedent **497**
- **5.9** Law of the Case **499**
- 5.10 Statutory Construction and Interpretation 500
- **5.11** Remand **503**
- 5.12 Writing Opinions 504

Subject Matter Index 507

Citation Index 521

Case Citation Index 533

Appendix: Checklists, Scripts, Forms